APPEAL NO. 93322

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on March 8, 1993, in (city), Texas, to decide the issue of whether the claimant suffered an injury in the course and scope of his employment. The appellant, hereinafter carrier, appeals hearing officer determination of this issue in claimant's favor. The respondent, hereinafter claimant, argues that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant had been employed by (employer). He testified that on (date of injury), he had been unloading bundles of steel which were hooked onto a crane operated by (JA). As he was walking back to the crane after delivering a load of steel, he tripped on a piece of steel on the floor and fell. He said he lay on the floor for a few minutes, then got up, went to the bending machine, and sat down. Although he said he did not think anyone saw him fall, another employee, Mr R, came over and asked what was wrong, and claimant said he told him what had happened. After another 10 to 15 minutes had elapsed, claimant went into the office of one of the supervisors, (CR), told him what had happened, and asked for some pain medication. Claimant said CR appeared not to believe him. He said the crane operator, JA, was also in CR's office and heard the conversation. The claimant went back to work and continued to work until quitting time, which was shortly thereafter.

The claimant did not come back to work the next day, but came into the office that day to pick up his paycheck. When he mentioned his injury to the person who gave him the check, he was referred to (RB). He said he talked to RB, who told him to come back the following Monday, and he would be sent to a doctor. The claimant said the next day, which was a Saturday, he went to a hospital emergency room because he could not wait to see a doctor. He returned to the emergency room on Monday, per the instructions of a doctor, but said he was told they could not treat him because he did not have insurance. He went back to see RB on Tuesday and was told that employer did not believe he was hurt.

On August 17, 1992, the claimant saw (Dr. S) at the Clinic. Dr. S stated his impressions as acute traumatic lumbosacral sprain complex and myofascitis, and possible medial collateral ligament damage and medial meniscus damage. He also took claimant off work and recommended physical therapy. The claimant said he had not returned to work since the date of his injury, although he had been doing sweeping for another employer.

RB, who is employer's corporate secretary, said claimant came to see him the day

following his alleged injury, but that claimant told him that he had fallen while unhooking steel from the crane. Because claimant did not indicate he needed immediate medical attention, RB said he told him to go home and rest and to use his health insurance card if he needed to see a doctor. In the meantime, he investigated claimant's story and found no other employees were aware claimant had been injured. He had also been told by (RA) that claimant told him the prior week he had hurt his knee playing soccer. Claimant said he played soccer but denied he had hurt himself doing it. In an unsigned transcription of a telephone conversation between RA, who works as a janitor for employer, and carrier's adjustor, RA said claimant was walking kind of bowlegged and claimant told him he had been playing soccer and got hit above his knee. The next day, RA said claimant told him he fell at work and some steel fell on his legs.

RB also stated his understanding that claimant had asked CR for some aspirin because of a headache. However, CR, who is the shop foreman, testified that on July 16th claimant asked him for aspirin because he had fallen and hurt his leg. CR also said claimant was limping two or three days before the injury and had told him he had been hurt playing soccer.

JA, employer's crane operator, testified that he did not see claimant fall. When claimant did not resume unloading steel from the crane, he went to see what was going on, and found claimant in CR's office asking for aspirin because his leg hurt. JA said he had seen claimant limping ever since he went to work for employer, and presumed claimant had a problem with his feet.

The carrier challenges the hearing officer's determination that the claimant was injured in the course and scope of his employment, largely based upon the fact that the alleged accident was unwitnessed and the claimant's testimony was uncorroborated. Clearly, this case presented conflicting evidence in the form of testimony between the claimant and carrier's witnesses. However, the hearing officer, who is the sole judge of the relevance and materiality of the evidence and of its weight and credibility, Article 8308-6.34(e), may believe all, part, or none of the testimony of any witness, Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.), and may believe one witness and disbelieve others. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Although not obliged to accept the testimony of the claimant, an interested party, at face value, nevertheless issues of injury and disability may be established by the testimony of a claimant alone. *See* Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992. The hearing officer in this case questioned all the witnesses and had the opportunity to judge their demeanor and responsiveness. We will not substitute our judgment for that of the hearing officer where, as here, the challenged determination is supported by sufficient evidence--in this case, claimant's own testimony, the medical report from Dr. S, and some testimony by carrier's witnesses that claimant asked for pain medication for a leg injury.

Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The hearing officer's decision and order are not so against the great weight and preponderance of the evidence as to be manifestly unjust and unfair. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge